



**In The
Supreme Court of the United States**

1978-79 Term

No. 78-829

GEORGE CLAYTON BLUE,
Petitioner,
vs.
STATE OF IOWA,
Respondent.

**PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF IOWA**

BRIEF FOR RESPONDENT IN OPPOSITION

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OPINION BELOW

The opinion of the Court of Appeals of Iowa is unpublished; it appears as appendix A of the Petition.

JURISDICTION

The jurisdictional requisites are adequately set forth in Paragraph 2 of the Petition.

QUESTION PRESENTED

May a closed notebook, removed from a suspect's possession for inventory purposes at the time of booking be seized and used in evidence, even though no showing of probable cause has been made?

STATEMENT OF THE CASE

Petitioner was arrested by agents of the Iowa Bureau of Criminal Investigation on charges of larceny in violation of §§ 709.1 and 709.2, Code of Iowa, 1975, and conspiracy in violation of § 719.1, Code of Iowa, 1975, for allegedly stealing tractors. The arrest was the culmination of weeks-long investigation by the BCI which included several meetings and negotiations by an undercover agent regarding the purchase of stolen tractors. After the arrest Petitioner was taken to jail in Black Hawk County, Iowa, where he was searched. A blue notebook was taken from his person at the time he was admitted to the jail and given to the BCI agents. Petitioner filed a motion to suppress the evidence contained in the notebook alleging it was taken as the result of an unreasonable search and seizure and that use of the notebook against him would violate his Constitutional rights under the Fourth Amendment. Petitioner stipulated at the time that the arrest was lawful. The trial court denied the motion to suppress and the evidence was later admitted at trial over renewed objections. Petitioner was convicted on two counts of larceny and one count of conspiracy. On appeal the Iowa Court of Appeals

vacated one larceny conviction, but upheld the trial court ruling on the admission of the notebook into evidence and affirmed the conviction for conspiracy and one count of larceny. The Iowa Supreme Court denied further review.

ARGUMENT

The State of Iowa respectfully submits George Clayton Blue's Petition for Certiorari should be denied for the following reasons:

I. The Petition was not Timely Filed.

Under Rule 22 of the Supreme Court Rules a petition for writ of certiorari to review a judgment of a state court of last resort in a criminal case must be filed within 90 days after entry of judgment. Petitioner's application for further review to the Iowa Supreme Court was denied July 21, 1978. The Petition for Certiorari to the Supreme Court of Iowa was filed on October 20, 1978, according to correspondence received by Respondent from this Court. This is more than 90 days from the date the highest State Court denied rehearing. Therefore the Respondent respectfully submits the Petition for Certiorari should be denied for failure to follow Rule 22 of the Rules of the Supreme Court of the United States. *U. S. ex rel. Coy v. United States*, 316 U. S. 342 (1942). But see, *Taglianetti v. United States*, 394 U. S. 316 (1969) (court has discretion to consider untimely filed petition).

II. The search and seizure at the Police Station was not illegal.

Petitioner was arrested by an agent of the Iowa Bureau of Criminal Investigation (BCI) who had been dealing with the Petitioner and others for the purchase of stolen tractors. After Petitioner's arrest he was taken to jail in Waterloo, Iowa, where he was searched as part of the admitting process before being put into jail. During the inventory search a notebook was taken from Petitioner and turned over to the BCI agents. Evidence in the notebook, including names, phone numbers, and a map were used against the Petitioner at his trial. Petitioner asserts that removal of the notebook and subsequent admission of its contents as evidence against him violated his constitutional rights to be free from unreasonable searches and seizures. Petitioner asserted this issue at trial and on appeal to the Iowa Court of Appeals. The trial court denied a motion to suppress and the Court of Appeals affirmed. The Iowa Supreme Court denied further review. Petitioner in this action seeks a writ of certiorari to the Iowa Court of Appeals to obtain review by this Court of the constitutional question of the propriety of the State court's rulings. The State of Iowa opposes the granting of the writ and urges that the State court's rulings were correct and consistent with well-established precedent of this Court.

Petitioner stipulated that the arrest was valid. A full search may be conducted in connection with an arrest, not only to protect the arresting officer but also to obtain evidence of the crime. *United States v. Robinson*, 414 U. S. 218, 235-36 (1973). As early as *Agnello v. United States*, 269 U. S. 20 (1925), this Court said the

right to contemporaneously search persons lawfully arrested while committing a crime to find and seize things connected with the crime was well-established. The search is an exception to the warrant requirement and is reasonable under the Fourth Amendment. In *United States v. Abel*, 362 U. S. 217 (1960) this Court upheld a search of items taken by the prisoner to the place of detention justifying it by comparing it to one incident to a lawful arrest. 362 U. S. at 239.

More recently in *United States v. Edwards*, 415 U. S. 800 (1974) this Court, citing *Abel, supra*, stated that:

"It is also plain that searches and seizures that could be made on the spot at the time of the arrest may legally be conducted later when the accused arrives at the place of detention."

415 U. S. at 803. And this Court indicated the question is not unsettled in the Circuits, citing *United States v. Caruso*, 358 F. 2d 184 (2d Cir. 1966), as typical of most cases in the courts of appeals. *Edwards*, 415 U. S. at 807. In *Caruso*, the defendant was arrested, taken to the police station, and made to remove his clothing which was then searched. Later he was given prison clothing and his own clothing was turned over to the F.B.I. as evidence. The Court held the inspection of the clothes and the holding of them as evidence was reasonable and proper. The Court categorized as extreme the defendant's argument that the search had to be made immediately upon arrest.

"The appellant's contention means that the seizure of his clothing could have been made constitu-

tionally only if, immediately on his arrest, he had been stripped to the buff on the public highway."

Caruso, supra, 358 F. 2d at 185. Likewise in the intent case, Petitioner's contention would mean that officials could obtain the evidence in the notebook only if they fully searched him *before taking* him to jail.

The law is clear that a search of a person who has been arrested may be made to find and preserve evidence as well as to protect arresting officers. The circumstances surrounding the conspiracy and larceny in this case made it probable that the Petitioner would have on his person some kind of incriminating evidence. A BCI agent investigating undercover mentioned numerous phone calls, meetings, arrangements made for meetings, arrangements for possible sales of stolen tractors and chemicals, and go-betweens for delivering money. It was not unreasonable to believe therefore that the Petitioner had papers on him which might incriminate him. The search and the seizure of the notebook incident to the arrest was entirely reasonable, particularly in the posture of this case.

The Iowa Court of Appeals properly affirmed the denial of the motion to suppress. The propriety of that ruling negates any possibility of error by the Iowa Supreme Court in denying further review. Petitioner had his appeal as a matter of right to the Court of Appeals and there is no constitutional right to further review under Iowa discretionary procedure. See *Carter v. Illinois*, 329 U. S. 173 (1947).

CONCLUSION

The writ of Certiorari should be annulled and the Petition dismissed.

CERTIFICATE OF SERVICE

I, Thomas D. McGrane, Assistant Attorney General for the State of Iowa, hereby certify that on the 26 day of January, 1979, I mailed three (3) copies of Brief for Respondent in Opposition, correct 1st class postage prepaid to:

William L. Kutmus
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Des Moines, Iowa 50309

I further certify that all parties required to be served have been served.

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